

SECTION 18. DISABILITY LEAVE

18-1. Definition.

Disability leave: Pay provided by the County to an employee who is:

- (a) temporarily disabled by an accidental injury or illness resulting directly from the performance of the employee's work; and
- (b) receiving Workers' Compensation benefits because of the temporary disability.

18-2. Disability leave.

- (a) The CAO must ensure that an employee is paid a supplement to the standard Workers' Compensation benefits, if the employee is:
 - (1) temporarily disabled while performing County work; and
 - (2)
 - (A) unable to perform normal duties, as determined by the Workers' Compensation Commission or by the County using Workers' Compensation Commission guidelines; or
 - (B) unable to perform alternative duties; as determined by the Employee Medical Examiner.
- (b)
 - (1) The County must provide a supplement to the standard Workers' Compensation benefit that equals the difference between the employee's normal County salary and the amount received under the Workers' Compensation statute.
 - (2) During the covered period of temporary disability, the County must adjust the employee's gross salary to offset the tax-exempt status of Workers' Compensation benefits. After the adjustment, the employee's net pay excluding shift differential and overtime must not be less than 100 percent of the net pay that the employee would receive if the employee were not receiving Workers' Compensation benefits.
 - (3) The County must include special pay differentials but not shift pay differentials or overtime in the calculation of net pay under this section.
 - (4) Reductions in gross pay to offset the tax-exempt status of Workers' Compensation payments must not adversely affect the calculation of final or final average earnings for retirement or any other County benefit.
 - (5) The County's payment of the supplement to Worker's Compensation benefits must:

- (A) continue for a maximum of 18 months if the employee uses the County-established network of physicians; or
 - (B) continue for a maximum of 12 months if the employee chooses to receive care from a physician who is not included in the County-established network of physicians.
- (c) An employee who is medically able to perform an alternative or light duty work assignment is not eligible for disability leave if the employee:
 - (1) performs an alternative or light duty work assignment offered by the County;
 - (2) refuses an alternative or light duty work assignment offered by the County; or
 - (3) elects to use FMLA leave instead of performing an alternative or light duty assignment.
- (d) After the employee's disability leave ends, the employee may use accrued sick leave, annual leave, or compensatory time to make up the difference between the employee's base pay and the Workers' Compensation benefit.
- (e) If an employee files an application for disability retirement before the employee's eligibility period for disability leave ends, the CAO must continue to pay disability leave until the CAO makes a decision on the employee's disability retirement application, even if this means that the period of disability leave payments will continue for longer than 12 or 18 months, as appropriate under Section 18-5(a) or (b) below.
- (f) If the CAO denies an employee's application for disability retirement, the employee may file an appeal of the CAO's decision with the Disability Arbitration Board under Section 33-43(l) of the County Code. The CAO must not pay disability leave to the employee while the appeal is pending.

18-3. Disability leave as FMLA leave.

- (a) A supervisor must designate disability leave as FMLA leave, even if the employee did not request FMLA leave, if:
 - (1) the leave is taken for an FMLA-qualifying reason described in Section 19 of these Regulations;
 - (2) the employee is eligible for FMLA leave; and
 - (3) the employee has not already exhausted the FMLA leave entitlement for the leave year.

- (b) An employee on disability leave who is eligible to use FMLA leave and who is medically capable of performing an alternative or light duty work assignment may chose to:
 - (1) take an alternative or light duty work assignment offered by the County; or
 - (2) use FMLA leave.

18-4. Managed care for job-related injury or illness. The County must provide an employee who has incurred a job-related injury or illness the opportunity to obtain medical care through a County-provided managed care program in which:

- (a) network physicians provide initial medical care to an employee at no cost, even if the employee's claim is later denied;
- (b) the managed care provider must:
 - (1) coordinate benefits with group health providers; and
 - (2) review the employee's utilization of the treatment plan.

18-5. Selection of physician and impact on eligibility period for disability leave.

An employee may select a physician to provide medical treatment for the employee's job-related illness or injury.

- (a) If the employee selects a physician from the network of physicians established under the County-provided managed care program, the employee may receive disability benefits for a maximum of 18 months.
- (b) If the employee selects a physician who is not included in the County-established network of physicians, the employee may receive disability benefits for a maximum of 12 months.

18-6. Subrogation for reimbursement of disability leave.

- (a) If an employee is granted disability leave for a job-related injury or illness caused by a third party who is legally liable for the injury or illness, the County has the right of subrogation against the third party.
- (b) If the legally liable third party reimburses the employee for the value of the disability leave, the employee must promptly reimburse the County for the disability leave, less the attorney's fees the employee incurred to obtain the reimbursement.
- (c) If the employee does not reimburse the County after receiving reimbursement from a third party, the County may initiate disciplinary action against the employee, up to and including dismissal.

18-7. Refund of disability leave overpayment.

- (a) An employee must promptly refund to the County a disability leave payment to which the employee was not entitled.
- (b) If the employee does not refund the payment to the County, the County may initiate disciplinary action against the employee, up to and including dismissal.
- (c) If the employee does not refund the disability leave payment to the County, the County may also consider the payment to be a debt owed to the County.

18-8. Appeal of disability leave decision. An employee with merit system status who is adversely affected by an alleged improper, inequitable, or unfair application of the County's regulations and policies on disability leave may file a grievance under Section 34 of these Regulations.

Editor's note – The subjects covered in this section of the Personnel Regulations are addressed for bargaining unit employees in the current collective bargaining agreements as indicated below:

Bargaining unit	Articles of current agreements with references to disability leave
Firefighter/Rescuer	10, Disability Leave 11, Family Medical Leave 19, Wages 48, Job Sharing Program
OPT/SLT	17, Disability Leave 34, Safety and Health 45, Family and Medical Leave
Police	11, Chronic Incapacity 17, Disability Leave and Injury on the Job 18, Annual Leave 20, Leave Without Pay 27, Secondary Employment 35, Vehicles 55, Job Sharing Program 59, Family Medical Leave Act